



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1023]

Certain Memory Modules and Components Thereof, and Products Containing Same

Commission Determination to Review-in-Part an Initial Determination Finding no Violation of Section 337; on Review, to Take no Position on One Issue; Affirmance of the Finding of no Violation and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337. On review, the Commission has determined to take no position on the issue under review. The Commission has also determined to affirm the ID’s finding of no violation of section 337 and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 7, 2016, based on a complaint filed on behalf of Netlist, Inc. of Irvine, California. 81 FR 69853-54. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of the following U.S. Patent Nos.: 8,756,364 (“the ’364 patent”); 8,689,064; 8,516,185; 8,001,434 (“the ’434 patent”); 8,359,501 (“the ’501 patent”); and 8,489,837. The Commission’s notice of investigation named SK Hynix Inc. of Gyeonggi-do, Republic of Korea; and SK Hynix America Inc. and SK Hynix Memory Solutions Inc., both of San Jose, California, as respondents. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

On May 31, 2017, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 21) terminating the investigation as to the ’364 patent based on partial withdrawal of the complaint.

On November 14, 2017, the ALJ issued his final ID and recommended determination (RD) on remedy and bonding in one document. The ID finds, *inter alia*, that none of respondents’ accused products infringe any of the remaining asserted patents. The ID also finds that claims 1-3 and 5-7 of the ’434 patent and claim 1 of the ’501 patent are not invalid as anticipated in view of U.S. Patent Publication No. 2005/0257109 A1 (“Averbuj”).

On November 27, 2017, complainant and respondents petitioned for review of the final ID. On December 5, 2017, complainant, respondents, and OUII each filed a response in opposition to the opposing petition for review. On December 5, 2017, the Chairman granted respondents’ motion for leave to refile its petition for review out of time.

Having examined the record of this investigation, including the ID, the parties' petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review the ID's finding that claims 1-3 and 5-7 of the '434 patent and claim 1 of the '501 patent are not anticipated by Averbuj. The Commission has determined not to review the remainder of the final ID.

On review, the Commission determines to take no position on the ID's finding that claims 1-3 and 5-7 of the '434 patent and claim 1 of the '501 patent are not invalid as anticipated in view of Averbuj. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421 (Fed. Cir. 1984). The Commission therefore affirms the ID's finding of no violation of section 337 and terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 16, 2018.

Lisa R. Barton,
Secretary to the Commission.

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